IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CIVIL JURISDICTION

WRIT PETITION NO.4769 OF 2005

Shrinath Shikshan Prasarak Mandal,)
a Public Trust registered under)
Bombay Public Trust Act) having their)
Office at P.O.Kondhapuri, Taluka)
Shirur, District Pune.)...Petitioner

Verus

1.The Registrar, SNDT Women's)
University at Mumbai having its)
office at 1, Nathibai Tbhackersey)
Road, New Marine Lines,Mumbai-400020)
2.National Council for Teachers)
Education (NCTE), Wester Regional)
Office, Bhopal having its office at)
Manas Bhawan, Shyamla Hills, Bhopal-)
460 002.)
3.The Director of Higher Education,)
Government of Maharashtara, Pune,)
having its officeat Central Building)
Pune-411 001.)
4.The Principal Secretary, Dept. of)
Higher and Technical Education,)
Maharashtara State, Mantralaya)

Mumbai-400 032.) ....Respondents

Mr. C.J. Sawant, Senior Advocate with Mr. P.J. Pawar & Mr. S.H.Bhosale for Petitioner.

Mr. A.A.Kumbhakoni, Associate Advocate General with Mr. P.I. Khemani, AGP for Respondent Nos. 3 and 4.

Mr. Uday P. Warunjikar with Mr. Rakesh Johri & Balasaheb Bandal for Respondent No.2.

Mr. R.A. Rodrigues with Mr. R.V. Phadnis for respondent No.1

WITH

WRIT PETITION NO.6172 OF 2005

State of Maharashtra, through Higher)
and Technical Education Department)..Petitioner

Versus

1.Sant Dnyaneshwar Shikshan)
Shastra Mahavidyalaya,)
Shrinath Shikshan Prasarak Mandal,)

Kondhapuri, Taluka Shirur,Dist.Pune)

2.Smt.Kashibai Navle College of)
Education, Savitribai Phule)
Society’s Gat No.273/2, Godsewadi,)
Kamlapur, Taluka Sangoa, Solapur)

3.Shri Gajanan Maharaj Shikshan)
Prasarak) Mandal’s Women Colege of)
Education at Otur, Dumberwadi,)
Tal. Junnar, Pune.)

4.Jyotiba Shikshan Sanstha’s NTS)
College) of Education, Plot No.28,)
Shivram Nagar, Parbhani.)

5.Dnyanganga College of Education,)
Zeal Education Society’s,No.25/3/3,)
Hingane Khurd, Sinhagad Road, Pune.)

6.Janata Shikshan Prasarak Mandal’s)
Women B.Ed. College, Opp. R.T.O.)
Jehangirgar Colony, Railway Station)
Aurangabad.)

7.G.H. Raisoni Academy for Creative)
Teaching, G.H. Raisoni Foundation)
Society, Nagpur.)

8.Mohamad Ali Johar Women’s College)
of Education, Everest Educational)
Society, Roshan Gate, Aurangabad.)

9.Prajasattak B.ED. College,Indian)
Youth and Women Development Society)

Saiprabhu Apartment, Ravinagar)
Square, Nagpur.)

10.Jijamata Bahuddeshiya Shikshan)
Prasarak Mandal, at Post Atoda,Tal)
Jalkot, Latur.)

11.Rajiv Gandhi College of Bachelor)
in Education Asthi,Allapalli,Tahsil
Chamorshi Dist. Gadchiroli.)

12.Panchganga Shikshan Prasarak Mandal
At and Post Prayag Chikhli, Taluka)
Karvir, Dist. Kolhapur.)

13.Shri L.P. Raval College of)
Education and Research Raval)
Nagar, Near Main Post Office, Opp.)
Rao, WAU Station,)
Mira Road (East), Thane.)

14.Gramsudhar Yojana, Tal. Narhed,)
Dist. Nagpur.)

15.Mahila Vikas Sanstha, Wardha,)
Kelkar Wadi, Nachangao, Wardha)

16.Parwati Dhondiba Dhankude B.Ed.)
College, Shri Bhairavnath)
Shikshan Sanstha At and Post Baner)
Tal. Haveli, Dist. Pune.)

17.The National Council for Teacher)
Education, Hans Bhavan, Wing-II,1,)
Bahadur Shah Zafar Marg, Near ITO,)

New Delhi110 002.)
(Through the Regional Director,)
NCTE, Western Region, Manas Bhavan)
Shyamla Hills, Bhopal-462002.)..Respondents

Mr. A.A.Kumbhakoni, Associate Advocate General with Mr. P.I. Kehmani, AGP for Petitioner.

Mr. S.V. Pitre for Respondent No.3.

Mr. Uday P. Warunjikar with Mr. Rakesh Johri & Balasaheb for Respondent No.17.

Mr. N.S. Dhumal for Respondent No.13.

CORAM: F.I. REBELLO &
DR. D.Y. CHANDRACHUD,JJ.
DATE : 28th September, 2005

ORAL JUDGMENT (PER F.I. REBELLO, J.):

. Rule in both the petitions. Respondents waive service. By consent heard forthwith.

2. We may briefly set out the facts of Writ Petition No.4769 of 2005. The petitioner is a Public Trust registered under the provisions of the

Bombay Public Trust Act and the Societies Registration Act. The petitioners are running a Secondary School having a strength of about 150 students. The petitioners desired to start an institute for B.Ed. course at Kondhapuri. To meet the requirement of infrastructure and other things, the petitioners have invested about Rs.1,17,09,553/- which amount has been expended towards land, land development, building, and other expenses as set out in para.2 of the petition. The petitioners made an application to SNDT Women's University, Mumbai on 30th October, 2004 and paid the requisite affiliation fees. A copy of the application was also forwarded to the Principal Secretary, Higher and Technical Education, Mantralaya, Mumbai. The petitioners also applied to National Council for Teachers Education (NCTE), Western Region Office, Bhopal in prescribed format for permission to start B.Ed. College for Women with necessary application fees and format on 31st December, 2003 and deposited the original FDR of Rs.5,00,000/- towards Endowment Fund. The petitioners contend that SNDT Women's University, Mumbai processed the petitioners application for affiliation and forwarded the same to the Principal Secretary, High & Technical Education, Mantralaya, Mumbai through the Director of Higher Education. The petitioners have averred

that their application was recommended for the establishment of the proposed B.Ed. College opened by the petitioners. NCTE by letter of 24th February, 2005 intimated to the petitioner whether the petitioners were ready for inspection as per the norms prescribed by NCTE. The Expert Committee of NCTE visited the petitioners campus on 6th June, 2005 and verified whether the infrastructure, staff and other norms were fulfilled. The report was submitted by the Committee to NCTE which approved and granted recognition for a B.Ed. College to be opened by the petitioners from the academic year 2005-2006 with an intake capacity of 100 students. After receipt of the said letter petitioners applied to the Government of Maharashtra on 4th July, 2005 for permission to start the college and/or inclusion of the name of the college in the Central admission process for the year 2005-2006. It is the case of the petitioners that the respondent No.4, the Principal Secretary to Department of Higher & Technical Education neither acted on the letter nor replied to the petitioner. As per the Maharashtra Universities Act after Government permission the institute can open the B.Ed. College. In the event the admission process is delayed the students will lose an academic year and the huge expenditure incurred by the petitioners on development of the

infrastructure and appointment of staff will be at stake. In para.1 of the petition, the petitioners have set out the various dates for completion of procedure for admission by the Central Admission Process.

3. In answer to the petition on behalf of respondent No.1 No.1 K.G.Bhide, Registrar, SNDT Women's University has filed an affidavit. It is pointed out that the respondent No.1 did not recommend the case of the petitioners to respondent No.3 as in terms of the Perspective Plan for 2002-2007 the Districtwise allocation for Pune is only one college. It is further pointed out that considering the Perspective Plan the petitioners application was not recommended. Reliance is placed on a judgment of this Court at its Aurangabad Bench in Writ Petition No.7676 of 2004. Since we have disposed off other petitions based on this Judgment, for the sake of record we may point out that other institutions fell in the perspective plan prepared by the respective Universities.

4. On behalf of the respondent Nos. 3 and 4 a reply was also filed on 16th August, 2005 by Bipin Vamanrao Sutar, Under Secretary, Government of Maharashtra, Higher & Technical Education

Department. It is pointed out that the petitioner had to obtain NOC from the State Government. The State Government has an important role to play in the process of grant of permission by NCTE and that is demonstrated by the Apex Court in the case of St. John Teachers Training Institute vs. Karnataka Govt. reported in 2003 (3) S.C.C. 321 and the affidavit filed before the Apex Court by respondent No.2. It is pointed out that the State Government has been assigned an important task of development and improvement of teacher's education and is vitally interested in education and specially in professional courses and it is the State Government which can correctly assess and know the extent of requirement of trained manpower and the supply of trained teachers keeping in view the requirements, change of occupation, etc. The input from the State Government by way of a NOC is vital for enabling the Council to discharge its functions and without the involvement of the State Government and availability of this vital input from the State Governments, NCTE cannot discharge its functions of grant of such permission. It is pointed out that there are 216 B.Ed. Colleges with an intake capacity of 20,180 students. In addition to these 216 existing B.Ed. Colleges, recently the NCTE has sanctioned additional 40 new B.Ed. Colleges on the basis of

NOC issued by the State Government prior to 2005-2006. It is also pointed out that the State Government has already issued NOC to nearly 80 new institutions upto 2004-05. There is sufficient intake capacity and in view of the sufficient intake capacity and other overall circumstances, a conscious decision was taken by the Cabinet Sub Committee in December, 2004 itself not to grant approval or issue NOC for starting any new institutions or increase the intake capacity of any existing institution imparting B.Ed. educational course for the year 2005-06. The decision by the Government was communicated to all the concerned Universities on 4th February, 2005 and the Universities were directed to communicate the Government decision to the concerned Institutions. The Universities, however, forwarded recommendations of the Institutions. It is on account of the policy decision of the State Government that the proposal of the petitioner institution was not forwarded to NCTE. It is pointed out that NCTE has not clarified under what circumstances NCTE had issued permission to the petitioners and other institutions without the NOC/endorsement of the State Government. Reference is then made to the Regulations made by NCTE for that purpose.

. An additional affidavit was filed by Bipin Vamanrao Sutar on 17th August, 2005. The decision of the Cabinet Sub Committee taken in its meeting dated 28th December, 2004 has been set out. It is pointed out that in the previous year 2004-05 the respondents had granted No Objection for starting new B.Ed. institution to about 80 institutions and accordingly communication was sent to NCTE, Bhopal vide communication dated 30th December, 2003 and 31st December, 2003. As the Cabinet took a decision to withdraw/cancel all these No Objection Certificates issued by the State Government some of the institutions to whom NOC were granted and subsequently cancelled filed Writ Petitions. A Division Bench of this Court was pleased to quash and set aside the decision of the State Government dated 17th January, 2004. However, liberty was given to the State Government to take such action in law after giving an opportunity of hearing to the petitioner therein. In so far as those institutions are concerned, the state Government revised the decision and issued fresh communication by treating the NOC as in operation. Similarly, in view of the order passed in Writ Petition No.762 of 2003 at the Nagpur Bench of this Court No Objection Certificate was also issued to 12 similarly situated institutions. After the decision of 28th December,

2004, it is pointed out that the Government has not issued any single NOC in favour of any institution. The procedure for issuing NOC is then set out.

. Respondent No.2 has filed an affidavit on 7th September, 2005. It is pointed out that the order dated 27th June, 2005 has been issued under Section 14 of the National Council for Teacher Education Act, 1993. NCTE had granted approval to petitioner's for starting B.Ed. College with annual intake capacity of 100 students from the academic year 2005-06. It is pointed out that once NCTE has granted sanction, considering Section 14 of the NCTE Act and the Regulations framed, the State Government and SNDT University should have implemented the order by granting permission to start B.Ed. College. The source of power and the right of NCTE is then set out. It is pointed out that NCTE had framed guide-lines on 2nd February, 1996. Regulations have also been framed. The applications for grant of recognition must be accompanied with a No Objection Certificate. The Apex Court considering the Herculean task that NCTE has to discharge, has held that it was legal and proper to depend on the assistance of the concerned State Government. It is pointed out that the State Government did inform NCTE about its general policy

not to issue any NOC to new B.Ed. Institutions from the academic year 2005-06 in view of out-put of existing B.Ed. institutions. This was examined by NCTE which decided not to accept the same amongst others for the reason that it did not take into consideration the education policy of Government of India known as Sarv Shiksha Abhiyan which requires opening of large number of primary school and thereafter secondary schools; it did not take into consideration the preferential needs of hilly and remote areas, need of teachers for science, mathematics and English, need of non-formal education of adults, disabled, tribals, etc. It did not taken into consideration the need of trained teachers who do not seek employment in other institutions but wish to use the training in self employment such as opening of coaching classes., etc., and various other reasons which for the present need not be adverted to.

. During the hearing of the petition an additional affidavit was filed on 14th September, 2005. It is pointed out that in the 73rd meeting the agenda included consideration of letter of State of Maharashtra dated 27th May, 2005, in which it was stated that the Government had decided not to issue any NOCs for starting new B.Ed. institutions during

the academic session 2005-06. The meeting was held between 3rd and 5th of June, 2005 which was attended by the State Representative of the State of Maharashtra. As the agenda could not be completed the meeting was continued on 16th and 17th June, 2005 at which meeting State Representative was not present. After considering the policy or views the Committee observed that the view expressed by the State of Maharashtara was not binding upon NCTE or conclusive.

5. We may now consider the reliefs and facts in Writ Petition No.6172 of 2006. This is a petition filed by the State Government. According to the State Government the Respondent No.17 i.e. the National Council For Teacher Education has granted permission to open 16 new B.Ed. Colleges in the State of Maharashtra inspite of the policy decision of the State Government. The reliefs, therefore, prayed are to quash the policy decision of NCTE to entertain/consider and/or grant any application of any educational institute seeking recognition/permission to open a new B.Ed. College within the State of Maharashtra during the academic year 2005-06 and to abide by the policy decision taken by the petitioner on 28th December, 2004 during the academic year 2005-06. Many of the facts

presently set out have already been set out in the earlier affidavit which has been filed in Writ Petition No.4769 of 2005 and to which we have exhaustively made reference earlier. Some of the facts bear repetition considering that this is a petition by the State Government. It is the contention of the petitioners in this petition that considering the scheme of the National Council for Teacher Education Act, 1993 the State Government has a vital role to play in the process of grant of recognition and that the Apex Court has accepted the vital and important role that the States Government such as the petitioner herein have to play in the process. It is pointed out that NCTE does not have any resources and/or its own infrastructure to assess the need of B.Ed. Education as also other relevant aspects including the scope for the trained teachers etc. throughout the country, much less a particular State. On account of that the 17th Respondent NCTE relies upon the resources of the State Government and its authorities to assess the relevant factors including the need for B.Ed. Education in the Country and the specific parts thereof. It is pointed out that NCTE has never brought to the notice of the petitioner any facts or figures by conducting any survey of its own for assessing the need/scope for B.Ed. Education

atleast in as much as the State of Mahatrahstra is concerned nor it has any material much less relevant and/or detailed particulars as to the facts and figures collected by the NCTE, independent of the present petitioner and on its own, which would enable NCTE to arrive at a conclusion as to whether any more B.Ed. Colleges are required within the area of petitioner. With a view to have a healthy competition between the educational institutions imparting education in the B.Ed. course, the State Government has taken a well thought out policy decision to the effect, that not a single new B.Ed. College than those already sanctioned are required to be approved and hence the prayers are to quash the policy decision of NCTE to entertain/consider and/or grant any application of any educational institution seeking recognition/permission to open a new B.Ed. College within the State of Maharashtra during the academic year 2005-06 and to abide by the policy decision taken by the petitioner on 28th December, 2004 during the academic year 2005-06. It is the contention of the petitioners in this petition that considering the scheme of the National Council for Teacher Education Act, 1993 the State Government has a vital role to play in the process of grant of recognition and that the Apex Court has accepted the vital and important role that the

States Government such as the petitioner herein have to play in the process. It is pointed out that NCTE does not have any resources and/or its own infrastructure to assess the need of B.Ed. Education as also other relevant aspect including the scope for trained teachers etc. throughout the contrary, much less a particular State. On account of that the NCTE relies upon the resources of the State Government and its authorities to assess the relevant factors including the need for B.Ed. Education in the Country and the specific parts thereof. It is pointed out that NCTE has never brought to the notice of the petitioner any facts or figures by conducting any survey of its own, for assessing the need/scope for B.Ed. Education atleast in as much as the State of Maharashatra is concerned nor it has any material much less relevant and/or detailed particulars as to the facts and figures collected by the NCTE independent of the present petitioner and on its own, which would enable NCTE to arrive at a conclusion as to whether any more new B.Ed. Colleges are required within the area of petitioner as such. The decision taken by NCTE, it is pointed out, and the reasons given for granting permission to open new B.Ed. College is unsustainable. It is also pointed out that the reasons given by the NCTE for concluding that the

policy decision of the petitioner dated 28th December, 2004 is not correct, are themselves factually incorrect and unsustainable and that the decision of NCTE is contrary to the policy decision of the petitioners dated 28th December, 2004. It is set out that in Maharashtra there are more than 350 Educational Institutions seeking to open new B.Ed. Colleges. It is also pointed out that the petitioner had granted some permissions to open B.Ed. Colleges for the academic year 2005-06. These cases were taken into consideration before the policy decision on 28th December, 2004 and after that the petitioner has not permitted a single new B.Ed. College. It is pointed out that while processing the applications to open new B.Ed. College, NOC/Endorsement of the petitioner is required. Reference is then made to various orders passed which may not be really necessary for deciding the controversy. It is pointed out that the petitioners have no remedy to challenge the decision of NCTE. The remedy of Appeal under the Act is not available to the petitioner, but only to persons aggrieved. It is pointed out that the persons aggrieved cannot be a party like the petitioner and in view of that the reliefs as prayed for.

. The petitioners have relied upon various documents including the affidavits filed on behalf of the NCTE in respect of other Petitions which were pending before this Court and which have already been disposed of by separate orders today.

6. On behalf of the respondent No.3 an affidavit has been filed pointing out that they had approached the State Government in October, 2004.In December, 2004 the University of Pune forwarded the proposal with the recommendation to the State Government for the establishment of the College. NCTE deputed a team of experts and after that in June, 2005 granted recognition for B.Ed. College for Women with intake capacity of 100 students. It is then pointed out that the State Government compels every Private Institutions to give an undertaking that no grant whatsoever will be claimed in future for running the College and it will be totally funded by Respondent No.3 and that it will be conducted on 100% No Grant Basis.

7. On behalf of NCTE, Regional Director Shri V.K.Dabral has filed an affidavit. It is pointed out that the petition ought not to be entertained as what the petitioner was seeking is virtually a relief contrary to the scheme of the Act and

contrary to the Judgment of the Apex Court in St. John's Teachers Training Institute (supra). It is then pointed out that the case of the petitioner only rests on the policy decision of the State Government. It is pointed out that what the petitioner communicated to NCTE is the communication dated 28th December, 2004, with reference to the decision taken by the Cabinet Sub Committee meeting held on 28th December, 2004. NCTE contends that the same cannot be treated as a policy decision considering the provisions of the Constitution of India. It is then pointed out that NCTE is bound to consider cases on merits of the Applicant Institution. It is also pointed out that NCTE has not taken any general decision and the decisions are taken in accordance with the provisions of the Act while discharging its duties. The decision taken under Section 14 of the NCTE Act depends on the facts and circumstances of each individual cases. It is then pointed out that NCTE is a statutory Corporation established for specific purpose as more particularly provided in the object clause of NCTE. Section 12 of the Act lays down the duties of NCTE. The order passed by the NCTE under Section 14 is binding including on the petitioner. It is pointed out that under the NCTE Act, the petitioner has no role to play other than as agent for collecting the

data for and on behalf of NCTE. The reliefs, therefore, prayed are beyond the scope and the scheme of NCTE. The NCTE Act is enacted by Parliament in exercise of the powers under Entry No.66 of List I of the VII Schedule in the Union List. The State cannot make any Legislation in respect of the field of education as set out in List I. The State, therefore, it is submitted has no Legislative competency. As such the petitioners could not have taken any policy decision in respect of a matter covered by the NCTE Act. It is denied that NCTE does not have any relevant material. Considering Section 12 of the NCTE Act, it is bound to conduct survey and collect information. It is so doing over the years and taking policy decisions. It publishes periodicals and books based on information collected from various sources. It is pointed out that the decision taken by the NCTE even if contrary to the so-called policy decision of the State of Maharashtra cannot be challenged as the policy decision itself is repugnant to the Act. It is pointed out that the facts reveal that for the year 2005-06,there were 16 institutions holding NOC granted by the petitioner, there were 17 cases without NOC of the petitioner which were carried forward for the academic year 2005-06. There are 204 cases where there is no NOC of the Government.

8. On behalf of the State of Maharashtra the learned Associate Advocate General at the hearing of these petitions on queries from the Court specifically informed the Court that if the petitions are allowed the State Government would not stand in the way of the institutions admitting students merely on the ground that there is considerable delay in the admission process.

9. On behalf of the State Government the following propositions have been canvassed:-

(i) What is the nature of the role that the State Government has to play in the process of consideration of an application filed by an educational institution seeking recognition under Section 14 of the National Council for Teacher Education Act, 1993;

(ii) Whether the decision of the State Government in as much as the question of "extent of trained manpower required in a particular State", is binding on the Council? If it is not binding then to what extent such a decision is important and under which circumstances the Council is entitled to over rule such a decision, if permissible?

(iii) Whether in the absence of any material whatsoever, the Council can process an Application filed by an Institution seeking recognition under Section 14 of the National Council for Teacher Education Act, 1993, contrary to the decision of the State Government as to "the requirement of trained manpower", especially in view of the regulations as amended on 6th June, 2003?.

. In support of the submissions, learned Counsel relied on the decision in the case of St. John’s (supra) and contends that it is only the State which can correctly assess and know the extent of requirement of trained manpower and supply of trained teachers keeping in view the requirement, change of occupation etc. It is in that context that the NCTE insists on NOC. The inputs from the State Government by way of NOC or endorsement is vital for enabling the Council to discharge it’s functions. The State is vitally interested in the development of its Educational system and, therefore, it must be given a decisive role and voice in the over all development of Teacher Education System in the country. It is pointed out in this context that the Apex Court has noted that the Regional Committee of NCTE in the absence of

inputs from the petitioner would not be in a position to perform the Herculean task.

10. From the averments and arguments advanced, the questions to be decided are as under:- (1) Whether the State Government can refuse permission to an Institution which has been granted approval/permission under Section 14 of the NCTE Act; (2) If the State Government as a Policy decides not to grant NOC/Endorsement for opening new B.Ed. Colleges is the same binding on NCTE considering the provisions of NCTE Act.

. As the answers to the questions are interlinked they are being decided together.

11. We may first gainfully refer to Section 14 of the NCTE Act. On coming into force of the Act every institution offering or intending to offer a course or training in teacher education on or after the appointed day may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner prescribed. The Regional Committee on receiving an application has to satisfy itself that the institution has complied with the requirements as set out therein. Under sub-section (4) every order

granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution by the concerned examining body, the local authority or the State Government and the Central Government. We then have sub-section (5) which sets out that in the event recognition has been refused then the institution shall discontinue the course or training in teacher education. Sub-section (6) is relevant. We shall reproduce the same:-

> "(6) Every examining body shall, on receipt of the order under sub-section (4):-
>
> (a) grant affiliation to the institution, where recognition has been granted; or
>
> (b) cancel the affiliation of the institution, where recognition has been refused.

12. The next relevant statute is the Maharashtra Universities Act, 1994. We may only refer to Sections 82 and 83 of the Act as these are the two Sections to which our attention has been invited.

Section 82(1) reads as under:-

> "(1) The university shall prepare a perspective plan, and get the same approved by the State Council for Higher Education for educational development for the location of colleges and institutions of higher learning in a manner ensuring equitable distribution of facilities for Higher Education having due regard, in particular, to the needs of unserved and under-developed areas within the jurisdiction of the university. Such plan shall be prepared by the Board of College and University Development, and shall be placed before the Academic Council and the Senate through the Management Council and shall, if necessary, be updated every year."

The other sub-sections postulate that the University will not consider an application for opening new college or institution of higher learning, which is not in conformity with such plan. The managements have to apply in the prescribed form to the Registrar of the University before the last date of October of the year preceding the year from which the permission is sought and after scrutiny as set out therein shall forward it to the State Government

with the approval of the Management Council on or before the last day of December of the year with such recommendations as are deemed appropriate by the Management Council. On the application being recommended by the University the State Government may grant permission as it may consider right and proper in its absolute discretion taking into account the State Government's budgetary resources and other factors. Under Section 83 on receipt of the permission from the State Government under Section 82 the Academic Council of the University shall consider grant of first time affiliation to the new college or institution by following the prescribed procedure given in sub-section (2) and after taking into account whether and the extent to which the stipulated conditions have been fulfilled by the college or institution. The decision of the Academic Council in this regard shall be final.

. A close look at these sections would, therefore, contemplate that in the State of Maharashtra various Universities have to prepare the perspective plan and only the applications which fall within the perspective plan will be considered. Even if the Application is recommended, there is still discretion in the Government to decide as to whether the Application ought to be considered or

not considering the budgetary provisions. In this case we are really not concerned with the budgetary aspect as permission in the instant case and other cases is for institutions which are unaided or what can be described as on non grant basis. There is no financial burden on the State Government. The second aspect of the matter is that it is only after the University forwards the proposal to the State Government and the State Government recommends the proposal will the University under Section 83 grant first time affiliation. The question, therefore, would arise whether these provisions of the Maharashtra Universities Act, 1994are in conflict with Section 14 of the NCTE Act and if they be in conflict which Act would prevail.

13. To consider these aspects, we may gainfully refer to the case of State of T.N. and Anr. vs. Adhiyaman Educational & Research Institute & Ors., (1995) 4 SCC 104. After considering List I Entry 66 and List III Entry 25 the Apex Court was pleased to hold that the All India Council for Technical Education Act, 1987 falls under Entry 66 of List I and Entry 25 of List III of Seventh Schedule to the Constitution. It is further observed that the provisions of the Act which are in conflict or inconsistent with the State Act, in that case the

T.N. Private Colleges (Regulation) Rules and Madras University Act and, therefore, to the extent of such inconsistency, the provisions of the State Acts are void. The issue before the Apex Court there was laying down of standards of education. The Court observed that the State Acts cannot lay down standards and requirements higher than those prescribed by the Central Act for technical institutions and cannot deny seats to applicants on the ground that they do not fulfil such higher standards/requirements. It would, thus be clear that from this judgment, that the provisions of the NCTE Act would prevail and any other Act which is inconsistent with the NCTE Act to that extent will be deemed to be void. In para.34 the Apex Court observed as under:-

> So also, when the power to recognise or de-recognise an institution is given to a body created under the Central Act, it alone can exercise the power and on terms and conditions laid down in the Central Act. It will not be open for the body created under the State Act to exercise such power much less on terms and conditions which are inconsistent with or repugnant to those which are laid down under the Central Act."

. Next reference can be made to the Judgment of the Apex Court in **Jaya Gokul Educational Trust vs. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Anr.,(2000) 5 SCC 231.**One of the issues considered was the power conferred under the All India Council for Technical Education Act, 1987 for grant of approval for establishment of technical institutions. In that case the Appellant, a self-financing Engineering College submitted an application to AICTE for permission. AICTE carried out inspection and after following the procedure granted conditional approval subject to certain conditions. The Appellant under the impression that the State Government had to grant permission requested the State Government for permission to start the College. In the meantime the University forwarded to the Government a list of Colleges for affiliation during the academic year 1995-96. The Appellant College was shown as one of the Colleges. The Appellant sent a reminder to the Government for permission for starting the College. The State Government by letter dated 16th August, 1996 intimated to the Appellants before the Apex Court their inability to comply with the request of the Appellant. Against that decision a petition came to

be filed which was allowed by the learned Single Judge. An Appeal was preferred by the State Government. The Appellate Bench allowed the Appeal by setting aside the order of the learned Single Judge but observed that the Appellant was at liberty to make a fresh application to the Government of Kerala for setting up of or sanctioning Engineering College or to request the Government to consider earlier application for future academic year. Before the Apex Court in the Appeal preferred on behalf of the State of Kerala it was argued that the policy of the State of Kerala at the relevant time was not to grant approval for establishment of more engineering colleges in the State. This was one of the issues which was before the Apex Court. The issue regarding policy was answered by the Apex Court as under:-

> "The so-called "policy" of the State as mentioned in the counter-affidavit filed in the High Court was not a ground for refusing approval."

Reference was made to the Judgment in **Tirumuruga Kirupananda & Variyar Thavathiru Sundara Sawmigal Medical Educational & Charitable Trust v. State of T.N.** which was a case relating to medical education

and which also related to the effect of a Central law on the law made by State under Entry 25 List III. It was held that the:-

> "essentially certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone."

. The Court then observed that therefore, the State Government cannot have any policy outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and the Regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. The Court however added, that if thereafter, any fresh fact came to light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission as required by AICTE to be complied with, were not complied with, then the State Government could always write to AICTE to

enable the latter to take appropriate action.

. The Ratio of the Judgment will, therefore, result in holding that the State cannot have any policy contrary to the AICTE Act and if it has any point to make the recourse it has to forward the same to AICTE Act. This follows from the principle that the right of the State in the matter of policy or administration are co-existensive with their legislative powers. If the State Legislation cannot enact a law on the subject the State Government can have no independent policy decision.

14. The Apex Court then also referred to the judgment of Adhiyaman Educational & Research Institute (supra) and in the matter of grant of approval for starting new technical institution reproduced the following observations from that judgment:-

> "It is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable".

The Apex Court then observed that because of Section 10(k) of the Central Act which vested the power of granting approval in the Council, The T.N. Act of 1976 and the University Act, 1923 could not deal with any questions of approval for establishment of technical institutions. All that was necessary was that under the Regulations, the AICTE Council had to consult them. In para.30 the Apex Court further observed as under:-

> "Thus, the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations."

15. A few other judgments were brought to our attention including the case of Shivaji University through Director vs. Bharti Vidyapeeth through Joint Secretary & Ors., (1999) 3 SCC 224 that issue pertained to granting of permission for setting up of Law Colleges and the resolution the State

Government on the same. The Apex Court noted that the resolution was to operate only till such time the Apex Court gave decision in Manubhai Pragaji Vashi's case. That judgment really need not be further adverted to.

. In the case of St. John Teachers Training Institute vs. Karnataka Govt. (supra) the issue before the Apex Court is whether Regulation 5(E) and (f) framed by the NCTE is ultra vires the provisions of the National Council for Teacher Education Act, 1993 and whether under the Regulations there was requirement of obtaining NOC from the State Government. It was contended that the Act does not contemplate any role for the State Government and as such insisting on obtaining NOC from State Government or Union Territory was illegal as the satisfaction had to be of Regional Committee. It is in that context that various affidavits were filed on behalf of NCTE which were considered more specifically in the matter of inputs from the State Government. The part of the affidavits in the judgment which was adverted to may be reproduced;-

> "Therefore, the input from the State Government by way of an NOC is vital for enabling the Council to discharge its

> functions of regulating the standards of teacher education since State Governments are the principal stakeholders in the field of teacher education. Without the involvement of the State Governments and availability of this vital input from the State Governments, the Council would be greatly handicapped in discharging its functions."

It was observed that the impugned regulation in fact facilitate the job of the Regional Committees in discharging their responsibilities. In other words in so far as the State Government is concerned, the only role it has to play is to give input to the Regional Committees and it is the Regional Committee ultimately which will decide the approval has to be granted. In so far as obtaining N.O.C. from the State is concerned it was observed that in case the State Government does not take into consideration the relevant factors enumerated in sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of an NOC, it will be open to the institution concerned to challenge the same in accordance with law. In the matter of endorsement of the State Government/Union Territory

Administration, issue of NOC will be considered by the Regional Committee while taking a decision on the application for recognition.

16. From the discussion and the case law as considered above, it would be clear that the NCTE Act has been enacted pursuant to the Entry 66 of List I and Entry 25 of List III of the VIIth Schedule. Entry 66 reads as under;-

> "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Entry 25 of List III reads as under:-

> "Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I vocational and technical training of labour."

. We have earlier noted that in so far as AICTE Act is concerned the Apex Court in the case of Adhiyaman Educational & Research Institute (supra) has been pleased to hold that the State Act falls

under Entry 66 of List I and Entry 25 of List III of the VII th Schedule of the Constitution of India. The NCTE Act is also a Central Legislation. That Act also falls within the same entries. In St. John's case (supra) the object of the Act has been explained by the Apex Court in the preample in the following words:-

> "As the preamble shows, the main object for enacting the Act is to achieve planned and coordinated development of the teacher education system and also the regulation and proper maintenance of norms and standards therein."

. It is, therefore, the authority conferred powers under the NCTE Act which alone will have jurisdiction to exercise the powers conferred under that Act. The State Government is not one such body. The State Government, therefore, cannot take a policy decision which will be contrary to the policy decision of the Authorities under the NCTE Act. Any policy decision if not accepted by NCTE or contrary to any policy of the NCTE Act would be of no effect. That policy at the highest can be placed for consideration by NCTE as an input with the limited role the State Government has to play under

the provisions of the NCTE Act.

17. Subsequent to that judgment in St. John's case the Regulations have been amended by Notification dated 6th June, 2003 and Para 6 of the Regulation has been substituted by the following:-

(i) Application from every institution seeking recognition to start to course or training in teacher education or from an existing institution seeking permission to start a new course or training and/or increase in intake shall be accompanied by a No Objection Certificate (NOC) from the State or Union Territory in which the institution is located. Application without NOC/endorsement of the State Government/UT shall not be processed by the concerned Regional Committee of NCTE.

(ii) Every State Government/UT Administration shall endeavour to dispose of the application of the institution seeking NOC for starting a course or training in teacher education or seeking permission to start a new course or training and/or increase in intake, as expeditiously as possible, and shall provide its NOC/endorsement within six months of the last date of receipt of application for grant of NOC fixed by the concerned State Government/UT.

(iii) Every State Government/UT Administration while considering application for grant of No Objection Certificate shall take into account the guidelines for issue of No Objection Certificate issued by the NCTE from time to time.

(iv) The NOC/endorsement of the State Government/UT Administration in regard to issue of No Objection Certificate (NOC) will be considered by the Regional Committee while taking a decision on the application for recognition.

(v) The State Government/UT Administration will indicate in the NOC the number of seats for which NOC is being granted within the ceiling of basic unit fixed by the NCTE for the concerned pre-service on teacher education and without this information it will be presumed that the NOC is for the basic unit of the course.

(vi) The NOC issued by the State Government/UT Administration will remain valid till such time the State Government/UT Administration withdraws/cancels it.

(vii) The NOC will deemed to have lapsed if the

institution fails to get recognition from NCTE for the course within three years from the date of its issue.

(viii) Requirement of NOC shall not apply to Government Institutions.

(ix) Requirement of NOC shall not apply to University Departments for taking up innovative teacher education programmes for a maximum intake of 50 (fifty only). The question as to whether a programme is innovative will be decided by the concerned Regional Committee."

Thereafter there was further amendment notified on 1st January, 2004 which took into consideration the Central Government's Sarva Shiksha Abhiyan and in Regulation dated 6th June, 2003 after Sub-clause (ix) of para.6 the following sub-clauses came to be added:-

"(x) The requirement of NOC shall not apply to institutions already recognised by NCTE for running a B.Ed. course and seeking recognition to start a course or training in Elementary Teacher Education or from an existing elementary teacher education institution seeking permission to increase in intake

in such a course for a period of three years from the date of notification of these regulations in the Officer Gazette.

(xi) The requirement of NOC shall not apply to institutions seeking recognition to start a course or training in Pre-School Teacher Education/Nursery Teacher Education or from an existing institution seeking permission to increase in intake in such a course, for a period of three years from the date of notification of these regulations in the Official Gazette."

18. With the above, we may now consider the role of the State Government. Firstly, in so far as the State Government is concerned, the only role it has to play is pursuant to the Regulations framed by the NCTE. Outside the Regulations, the Act does not confer any power on the State Government. In this case and the other cases the State Government proceeded on the basis of its policy decision which was communicated to NCTE. As explained earlier and considering the judgment in Jaya Gokul Educational Trust (supra), the State Government when the power to grant approval is under the Central Act, can take no independent policy decision. As set out by NCTE in their affidavit the Western Regional Committee on

which the State of Maharashtra is also represented NCTE did not accept the purported policy of the State Government. NCTE relied on its Perspective Plan 2003-2007 issued by it for Teacher Education and the Sarva Shikshan Abhiyan. The perspective plan was placed before us. That amongst others provides for Manpower Planning and Teacher Education Surveys. The Perspective Plan took note of the fact of the projections regarding additional demand for teachers during the 10th Plan as given in the Working Group Report on Elementary and Adult Education for the 10th Five Year Plan. In terms of statstics and future projection of teacher education in Maharashtra and projection of 2001 in terms of the perspective plan the number of additional teachers required was held to be 6790. In other words this is not a case where NCTE did not have its own perspective plan or data. Once the NCTE had its own data and perspective plan and the same was taken into consideration together with the policy and the projections of the Central Government's programmes, it was not open to the State Government to have insisted that NCTE is bound by the policy decision of the State Government. Even otherwise considering what is held in Jaya Gokul Educational Trust (supra), the policy of the State Government if it could make a policy has to give way to the policy of

NCTE. Considering the powers conferred under the NCTE Act and more so, the provisions of Sections 14 and 15 of NCTE Act.

19. On behalf of the University their learned Counsel had drawn our attention to the judgment in the case of **Krishnasamy Reddiar Educational Trust vs. Member Secretary, National Council for Teacher Education & Anr., (2005) 4 SCC 89**. The issue there was the submission of an application without No Objection Certificate from the State Government. As noted earlier in terms of Regulation the application has to be forwarded to the Regional Committee with NOC/Endorsement from the State Government. It was argued on behalf of the Appellant before the Apex Court that submission of NOC is not strictly necessary,for if NOC is not granted by the State Government, an application can be made by the Applicant and it was obligatory on NCTE to consider such application and to take proper decision thereon. Dealing with the contention and after referring to the judgment in St. Johns Teachers Training Institute (supra), the Court noted that in those cases applications were submitted without NOC from the State Government. The State Government therein because NOC was applied belatedly could not

take decision considering that under the Regulations it was required to dispose of such application within six months of the last date of receipt of the application.

. In the instant case after the communication by the State of Maharashtara of its purported policy decision, the natural consequences which must be read is that the State Government had rejected all applications. It did not forward the application with an endorsement as it was bound to do so. The NOC or Endorsement would only be an input for NCTE to consider the application for approval and is not binding on the NCTE. In these circumstances it was open to the NCTE to have considered the applications considering the stand of the State Government. Further more the State Government was bound to give N.O.C. or endorsement and forward the application to the Regional Committee. The State Government in terms of the regulations was duty bound to forward the application to NCTE. A responsible Government could not abdicate its role by sitting on the application and now contend that NCTE could not have considered the application. The policy decision was not of individual case, but generaly. Would NCTE be rendered helpless and not in a position to exercise its power on failure by the State Government to

forward the Application. We do not think so. If the State Government had not forwarded the application within a reasonable time, NCTE as the body conferred with the power of dealing with the grant of approval would consider the application on its own. Learned Counsel for the University also drew our attention to the judgment in **Marathwada Association for Social Services, Aurangabad vs. State of Maharashtra & Ors., 2005 (3) Mh. L.J. 308.** That only dealt with the issue about the time to initiate the admission process and in that context the learned Division Bench in order to streamline the process of application for permission, referred to various provisions of the University Act as also the judgment in St. Johns Teachers Institute (supra). That Judgment did not deal with the controversy which is in issue before us namely the policy decision of the State Government.

20. Our attention is then invited by Counsel for NCTE to a judgment of the learned Single Judge of the Gujarat High Court in the case of **Hasmukhlal Manekchand Shah & Manharlal P. Sanghvi vs. Saurashtra University & Ors.** in Special Civil Application No.15598 of 2005 and other petitions disposed of by the learned Judge on 16th August,

2005. In that case also the issue was as to what is the effect of refusal to grant No Objection by the State to an institution to which recognition has already been granted under Section 14(3)(a) of the National Council for Teacher Education Act, 1993. After considering the case law the learned Single Judge was pleased to hold that the decision of the State Government and its communication will not affect the recognition granted by NCTE and accordingly quashed the orders and issued directions to the respondents therein. That view was subsequently followed by another learned Single Judge of the Gujarat High Court in the case of Late Sonaben Veljibhai Chaudhari vs. State of Gujarat in Special Civil Application No.16339 of 2005 disposed of on 18th August, 2005. In that case mandamus was issued against the State Authority to issue NOC.

22. In the instant case as we have noted the State Government had taken a policy decision not to grant NOC for any new institutions for the academic year 2005-2006. That decision was considered by the NCTE which did not accept the policy decision of the State Government, but granted approvals to various colleges whose applications were entertained on failure by the State Government to refer the applications. The State Government was represented

in the Regional Committee which took the decision. It appears that on that particular day the representative of the State Government was absent. Therefore on failure by the State Government to forward the applications it was open to NCTE to consider the application as there would be a deemed endorsement on the application. From what we have set out earlier it is absolutely clear that the role of the State Government is pursuant to the Regulations framed under the NCTE Act and not independent of the Act. The NOC/endorsement is to enable the NCTE Committee to take a decision. The policy decision, however, as noted in the judgment in Jaya Gokul Education Trust (supra) if it is in conflict with the policy decision of the NCTE Act is of no consequence. Similarly, in so far as the University is concerned, considering the provisions of Section 15 of the NCTE Act, once permission has been granted under Section 14, the University is bound to grant affiliation in terms of the Act, Rules and Statutes. Section 83 requires the University to grant affiliation only after permission is granted under Section 82 of the Maharashtra University Act. To that extent the provisions of Section 82 and 83 are inconsistent with the provisions of NCTE Act and are null and void. However, that does not mean that an

institution to which NCTE has granted approval is not bound to follow the procedure for affiliation. That procedure will have to be followed. Once NCTE grants approval the University will have to grant first time affiliation. There will be no requirement in case of first time affiliation for the University to carry out fresh investigation as that has been already done by the Committee. All that the Institution will have to do is to comply with other requirements like payment of fees, etc., in order to grant first time affiliation. If the first time affiliation is granted the institution will have to comply with other requirements of the Act, Rules, Statutes and Ordinances to get permanent affiliation. In this judgment we have deliberately not expounded on the issue of repugnancy as that issue has been settled by the Apex Court in State of T.N. & Anr. vs. Adhiyaman Educational & Research Institute & Ors. (supra). The provisions of the said Act and the University Act to the extent they are inconsistent with the provisions of the NCTE Act would be null and void. The State Government once the approval is granted by NCTE is bound to include the name of the College in the Central Admission procedure according to law.

22. There is, however, one issue in the matter

which has disturbed us. The role of the State Government as a Stakeholder has been recognised. The grant of approval by NCTE for setting up of institutions apart from its national policy is also in respect of particular State and its requirements. It is not as if the said requirements are not material for NCTE to follow its policy. There could be States where there are sufficient number of institutions and teachers, there could be other States where there are less number of teachers and students. Sarva Shiksha Abhiyan is for catering to primary education and, therefore, the need for setting up of D.Ed. and not B.Ed. Colleges. The State Government had enacted the Universities Act by which every University in the State has to prepare a Perspective Plan. It is in these circumstances and in order to get the vital input that NCTE will have to communicate to the State Governments their requirements both State specific as also for the entire country so as to enable the State and the Universities to redraw their Perspective Plan in tune with the policy of NCTE. This will only aid NCTE in achieving its objective. The State Government and the NCTE cannot work in an area of hostility. The object of education is enlightenment. A body which has been entrusted with such vital task in the field of education must,

therefore, when they frame regulations which requires NOC/Endorsement from the State Government communicate its policy decisions and/or seek comments from the State so as to enable the State to give its feed back on that vital input considering the over all national perspective apart from individual applications. We hope and as assured by the Counsel for the NCTE, that the concern expressed by this Court has been communicated to NCTE and that NCTE hereinafter will definitely take into consideration the State's views and also forward to the State Government its policies so as to enable the State Government to accordingly direct the Universities to reframe the Perspective Plans. No doubt ultimately the power to grant approval remains with NCTE.

23. It is no doubt true that in Writ Petition No.4769 of 2005 in the Perspective Plan no institution could have been set up. However,, as stated earlier that is totally irrelevant considering the Central Act and the policy of NCTE. Once the NCTE has granted permission the University is bound to grant affiliation under Section 15 of the Act and to that extent really speaking there is no requirement of any permission of the State Government to grant permission for opening of the

College under Section 83 more so considering that it is a non-grant college.

. Having answered the issue on merits, the objections raised to the maintainability of the petition filed by the State are left open and not answered.

24. In the light of the above the following order:-

. For the reasons stated in the Judgment, we direct the Director of Higher Education, Government of Maharashtra to forthwith include the name of the petitioner institute in the list of Central Admission process for the year 2005-2006 B.Ed. Course consequent to the petitioner being allowed to start B.Ed. College. The University considering Section 14(6) of the National Council for Teaching Education Act, 1993 to grant first time affiliation to the petitioner college to enable the College to admit students. That affiliation would be subject to the petitioner College fulfilling the requirements as required by the University to grant first time affiliation in terms of the University Act, Rules and Statute to the extent that has to be complied with. It is made clear that those who have

been admitted pursuant to the Central Admission Process, are not eligible to apply against the seats now available and admissions already done will not be interfered with and the new seats will be filled in from amongst the candidates still on the merit list, by conducting a special round of admission.

. Rule made absolute to that extent in Writ Petition No.4769 of 2005.

25. Rule discharged in Writ Petition No.6172 of 2005 subject to what we have set out in the body of the judgment.

. Learned Counsel for the State Government seeks stay of the order in Writ Petition No.4769 of 2005. We do not think this is to be a fit case to grant stay of the order. Application for stay rejected.

(F.I.REBELLO, J.)

(DR. D.Y. CHANDRACHUD, J.)